

A BASIC GUIDE TO LOBBYING REGISTRATION AND DISCLOSURE IN THE CITY OF SAN JOSE

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A BASIC GUIDE TO LOBBYING REGISTRATION AND DISCLOSURE IN THE CITY OF SAN JOSE¹

What does the San Jose Municipal Lobbying Ordinance regulate?

The City's lobbying Ordinance (San Jose Municipal Code Chapter 12.12) regulates persons who are paid or compensated by others to attempt to influence City decisions. It requires certain individuals and entities to register as a lobbyist with the Office of the City Clerk and requires public disclosure by quarterly reporting of certain lobbying activities and including money spent and received in connection with their lobbying activities in the City.

When did the Ordinance take effect?

September 24, 2004.

What is lobbying?

Lobbying means influencing or attempting to influence a City official with regard to a legislative or administrative action or decision of the City of San Jose or the Redevelopment Agency. "Influencing" means purposeful communication for the purpose of promoting, supporting, changing, opposing, or otherwise, intentionally affecting the official actions of a City official by any means such as using persuasion, information, incentives, studies or analyses.

Who is a City official under the Lobbying Ordinance?

"City official" includes:

- The Mayor and Councilmembers.
- Any appointee of the Council such as the City Manager or Executive Director of the Agency.
- Staff member of the Mayor, Councilmember or Redevelopment Agency Board Member.
- Members of the Planning Commission, Appeals Hearing Board, Civil Service Commission.
- Any City representative to any joint powers authority to which the City is a party.
- City Manager, Assistant City Manager, Deputy City Managers.
- Executive Director of the Agency and his or her Assistants and Deputies.
- City and Agency Department Heads.

Who qualifies as a "Lobbyist"?

There are three kinds of lobbyists: Lobbyist (Contract), In House Lobbyist and Expenditure Lobbyist. If you lobby according to the "lobbying" definition above, and you

¹ This Guide is intended to be advisory only. Any questions about this Guide or the Lobbyist registration process can be directed to the City Clerk, City of San Jose.

meet the threshold requirements one of the three kinds of lobbyists, then you are a lobbyist and must register and file quarterly disclosure reports with the City.

What is a Lobbyist (Contract)?

This kind of lobbyist engages in lobbying for one or more clients and receives or has entered into an agreement for compensation of \$1,000 or more for any services which includes lobbying during any consecutive 3 month period. Compensation means any economic consideration for services rendered or to be rendered in the future such as contingency fees, success fees, bonuses or awards.

A Lobbyist (Contract) can be an independent contractor, sole practitioner, a partner in a firm, owner of a firm, or an employee of a firm to qualify as this kind of lobbyist. Further, a Lobbyist (Contract), for example, can be an attorney, engineer, architect or accountant if they engage in lobbying and meet the threshold requirements.

What is an In House Lobbyist?

There are two types of In House Lobbyists. One type is an individual who works as an officer or employee for an organization or association which has a membership such as for example, a trade or industry association. This individual is compensated by the organization or association to advance its goals or mission. If this individual engages in lobbying City officials on behalf of the organization or association in an aggregate amount of 20 hours or more within any 3 month period then he or she is a lobbyist.

The second type of In House Lobbyist is an owner of a business or an employee of a business or organization who is compensated more than \$1,000 in a month for engaging specifically in lobbying. If this individual engages in lobbying City officials on behalf of the business or organization in an aggregate amount of 20 hours or more within any 3 month period then he or she is a lobbyist.

The 3 month period for purposes of the aggregate amount of 20 hours is calculated as follows: for example, if the first hour lobbying a City official is on November 15, 2004, then the 3 month period will end on February 15, 2005. If an individual lobbies City officials for at least 20 hours during this period, then he or she meets this threshold requirement.

What is an Expenditure Lobbyist?

This kind of Lobbyist can be an individual, business, corporation, association, organization or a group of persons acting together. If a person spends money or makes expenditures of \$5,000 or more to carry out public relations or advertising types of activities with the intent to solicit or urge other persons to communicate with any City official in order to attempt to influence a City legislative or administrative action, then this person is a lobbyist. The \$5,000 threshold doesn't include compensation paid to lobbyists or employees for engaging in lobbying. Also, the \$5,000 threshold doesn't include dues payments, donations or other consideration paid to an organization whether or not such dues or donations are used to lobby.

What do I have to file as a lobbyist?

All lobbyists use the same Lobbyist Registration Report for initial registration, quarterly reporting and amendments. The Report is available at the City Clerk's Office. The initial registration Report is due within 10 days after qualifying as a Lobbyist. Quarterly reporting is mandatory and Quarterly Reports are due by April 15, July 15, October 15 and January 15 for the prior calendar quarter, and are delinquent after these dates.

The Report provides instructions for required information and disclosure requirements. Questions may be directed to the City Clerk.

What registration fees must be paid and what penalties may be assessed?

In accordance with Resolution No. 72165 the following fees and fines are effective January 1, 2005:

Lobbyists must pay an annual fee of \$350 per registrant. Those persons registering for the first time after June 30 of a given year must pay a reduced fee of \$175. Annual registration renewal fees are due no later than January 15 of each year.

Lobbyists are also required to pay a fee per client for whom lobbying is undertaken for compensation in excess of \$500. The fees are \$60 per client which are due with the registration. The fees for subsequent clients are due at the time that quarterly Reports are submitted.

There will be a fine of 5% of the unpaid fee per day assessed for delinquent fees up to a maximum of 100% of the unpaid fees until the registration fees and the fines are paid in full.

There is a fine of \$10 per day for delinquent quarterly reports until the quarterly reports are filed with the City Clerk.

Who is exempt from registering?

Details about who is exempt are contained in San Jose Municipal Code Section 12.12.300. The following persons are exempt from the requirements of the Lobbying Ordinance:

- Public officials acting in their official capacity.
- News media engaged solely in the publication or broadcasting of news, editorials or commentary.
- Certain consultants for the City or Agency and those who are invited to give testimony or to attend a meeting such as a task force or department committee meeting to provide information or assistance requested by the City or Agency staff.
- A person, who without additional compensation and not a part of his or her regular employment, represents the position of an employer or organization such as a trade association when that employer or organization already has a representative registered as a lobbyist under the Ordinance.

- Persons appearing at a public meeting or hearing or a person who prepares, processes or submits documents or writings for use at a public meeting or hearing or other official public proceeding.
- Any person whose only activity includes submitting a competitive bid, a response to the request for proposals or qualifications, participating in an oral interview for a request for proposals or qualifications or to negotiate the terms of an authorized City agreement.
- A person who meets with City officials solely to lodge whistleblower complaints.
- A person who meets with the City Attorney or City Clerk regarding a claim, litigation or negotiation of agreements.
- Uncompensated members of the board of directors of nonprofit organizations.
- Members of neighborhood associations, Neighborhood Advisory Committees or Project Area Committees.
- Persons who communications related to City collective bargaining agreements or who appear before the Civil Service Commission.
- A person whose communications are solely in connection with the administration of an existing contract with the City or Agency.

What are the general registration requirements?

A lobbyist is required to register with the City Clerk no later than 10 days after qualifying as a lobbyist. Renewal of registration is required by January 15 of each year unless status as a lobbyist has terminated. A declaration of termination as a lobbyist should be filed with the City Clerk no later than January 15.

What specific registration information is required regarding lobbyists and their businesses?

- Name, business address, telephone, fax numbers of all persons required to register including the names of sole proprietorships and partnerships of fewer than 5 persons. Corporations should also include the names of officers and agent for service of process, if any.
- A business or organization should also describe the nature or purpose of its business or organization.
- Lobbyist information should also include the names of all owners, officers and employees conducting lobbying activities and a brief description of the legislative or administrative actions the lobbyist is seeking to influence.
- Expenditure lobbyists should also include a brief description of the legislative or administrative action the lobbyist is seeking to influence.
- Lobbyists who are individuals, including In House Lobbyists, must also describe the nature of the business, organization or association which employs or compensates the lobbyist and include a brief description of the legislative or administrative action the lobbyist is seeking to influence.

What registration information is required about the lobbyist's clients?

Client information must include the name, business address, telephone of each client, the nature of each client's business and a brief description of the legislative or administration action(s) that the lobbyist is seeking to influence on behalf of the client and the name of each person employed or retained by the lobbyist to lobby on behalf of each client.

When are Quarterly Reports due?

Quarter reports are required for each calendar quarter in which the lobbyist was required to register. The quarterly reports must be filed with the City Clerk no later than 15 days after the end of the qualifying quarter on March 31, June 30, September 30 and December 31 whether or not any lobbying activities have occurred during such period.

What information is required in the Quarterly Reports?

- Quarterly Reports must have the same information required to be disclosed in the initial lobbyist registration, for those activities in that quarter.
- Each Quarterly Report must indicate the total economic compensation promised or received from each client listed during the reporting period for lobbyist services in accordance with the following ranges: (\$500 - \$1,000), (\$1,001 - \$10,000), (\$10,001 - \$100,000), and (Over \$100,000).

What additional information and disclosures are required of lobbyists?

The initial lobbyist registration must contain the following information for the preceding calendar quarter:

- Campaign and officeholder contributions to an elected City official or candidate.
- Campaign and officeholder contributions made at the behest of an elected City office or candidate to any other elected public official or candidate for public office.
- All independent expenditures made for or on behalf of a City official or candidate for City office.
- Fundraising activity for any City official, candidate for elective City office or any controlled committee of the elected City official or candidate for City office or for any political action committee, political party or candidate for elective office of a governmental organization made at the behest of a City official.
- Donations to for profit or nonprofit organizations made at the behest of a City official or candidate for elective City office of any contribution or payment of more than \$1,000 in the aggregate.
- Payments received for services as a consultant or in any other capacity for services rendered to any City department or Redevelopment Agency, City official or City official-elect, their controlled committees or officeholder committees.

- Lobbying contacts made with City officials or City officials-elect. Contact information must include a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence and the number of contacts in the following ranges: (1), (2-5), (6-10) or (11 or more).
- Activity expenses such as payments that directly benefits any City official, City official-elect or member of his or her immediate family or domestic partner.

What are some of the activities that are specifically unlawful under the Lobbying Ordinance?

The Ordinance prohibits the following activities by a lobbyist:

- Engaging in lobbying activity or accepting compensation as a lobbyist unless the person is registered as a lobbyist and filed the information required by the Ordinance.
- Doing an act with the purpose and intent of placing a City official or family member of an official under the personal or financial obligation, such as a loan, to the lobbyist.
- Intentionally deceiving or attempt to deceive a City official as to any material fact which is pertinent to any pending or proposed City or Agency legislative or administrative action.
- Contacting an official as a lobbyist in a name of any fictitious person or existing person, unless with the consent of such person.
- Representing that the lobbyist can control or obtain the vote or action of a City official.
- Perform services for a client on a matter when the lobbyist had performed services on the same matter as a consultant for the City or Agency.
- Contacting members of a an evaluation team or panel for a City or Agency Request for Proposals or Qualifications other than a designated contact person during the time from release to prospective proposers of the Request until a recommendation is made public by the City or Agency.

Does the Lobbying Ordinance prohibit any activity by City officials?

Yes. City officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist or recommend the name of a particular lobbyist to facilitate favorable legislative or administrative action with regard to such person's matter pending before the City or Agency.

How is the Lobbying Ordinance enforced?

The Ordinance is enforced in several ways.

- Upon the written request of any City Official, the City Clerk can issue "an order to show cause" to any unregistered person. This order specifies a time and place where the person appears before the San Jose Elections Commission to provide evidence to the Commission that he or she has complied with the registration requirements or is exempt from registration. Failure to register in accordance with the requirements may result in debarment from appearing before the Council or Agency.

- The City Attorney can investigate complaints of violations and seek judicial or injunctive relief to enjoin violations or compel compliance with the Ordinance.
- Any person may file a complaint with the Elections Commission.
- The City Attorney or City Clerk may put lobbyists on notice of a potential violation of the requirements of the Lobbyist Ordinance.

PRACTICAL QUESTIONS

When does the 20-hour threshold for aggregate lobbying hours begin?

The 20 hour threshold begins when “lobbying” or purposeful communication with a City official begins. This would include, for example, a meeting, phone conversation or email communication with a City official as defined in the Ordinance. This does not include preliminary research or the gathering of information.

When do I need to register as a lobbyist with regard to the 20-hour threshold?

The Ordinance requires that an in-house lobbyist register within 10 days from qualifying as a lobbyist. For example, once the 20-hour threshold in three months has been met, then you must register within 10 days of qualifying as a lobbyist.

My firm is a real estate consulting firm that employs two independent contractors who represent clients and who provide lobbying services. Each contractor does not meet nor exceed the 20-hour minimum within any three month period. Each contractor is compensated more than \$1,000 within the three month period for representation of clients including lobbying services. Do they need to register as contract or in-house lobbyists?

They need to register as Lobbyists(Contract). Each independent contractor is a Lobbyist (Contract) if they meet the thresholds for compensation during any consecutive 3 month period and engage in services which includes lobbying. They are not In House Lobbyists as defined in the Ordinance.

My lobbying firm uses sub-consultants who may qualify as lobbyists who identify the firm as a client or who may also identify the firm’s clients as their client. Do they need to register as lobbyists?

“Sub-consultants” may qualify independently as lobbyists under the Ordinance. If so, they must register as lobbyists. They would also need to list the name(s) of those client(s) for whom you retain the services of the sub-consultants.

If I volunteer my services and sponsoring a dinner for a Council candidate in order to raise funds, is this reportable on the Lobbyist Registration Form?

Yes if requested by a City official. Fundraising activity for any City official, for any political action committee, political party or candidate for elective office of a governmental organization made at the behest of a City official must be disclosed.

If I don't have a retainer fee arrangement with a client but one that provides a fee in the future based on a milestone or based on a result, would I need to report this fee?

Yes. This is compensation that is promised on a success fee or contingency fee basis. As promised compensation under the Ordinance, it must be reported in accordance with the ranges set out in the Ordinance.

If I hire a polling firm to conduct opinion research on a development that may come before the City Council, and the results of the research are presented only to my client and not to a City official, is the polling firm or pollster considered a lobbyist?

No. If a polling firm or pollster engages only in research and data gathering and does not solicit or urge, directly or indirectly, other persons to communicate directly with any City official, then the firm or pollster is not an expenditure lobbyist under the Lobbyist Ordinance.

My neighborhood association wants to oppose a certain project near the neighborhood school. I've talked to our City Councilmember and employees in the Planning Department about assisting our association. Do I need to register as a lobbyist?

No. Members of neighborhood associations are exempt from the requirements of the Ordinance.

I am an attorney retained to represent a client in obtaining a large contract for consulting work for the City. There are legal issues that I intend to raise with elected City officials and department heads. Do I need to register as a lobbyist?

If you engage in influencing or attempting to influence a City official with regard to a City legislative or administrative action and you are paid \$1,000 or more for such services during any consecutive three month period, you must register as a lobbyist (contract).